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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37

Addendum

Visit by the Special Rapporteur to Pakistan

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Introduction

1. In 1994 the Government of Pakistan extended an invitation to the Special Rapporteur to undertake a mission to the country and it was agreed that a visit would take place in April of that year. Subsequently, the Permanent Mission of Pakistan to the United Nations Office in Geneva informed the Centre for Human Rights that April was not convenient for the Government. The Special Rapporteur proposed periods in June or August 1994, neither of which proved convenient for the Government. Agreement was subsequently reached for a mission to take place from 14 to 23 December 1995, but this mission was also postponed at the request of the Government. Eventually, it was agreed that the visit would take place early in 1996 and the Special Rapporteur carried out the mission from 23 February to 3 March 1996, including visits to Islamabad, Lahore and Karachi.

2. In Islamabad the Special Rapporteur held meetings with the following government officials: Mr. Iqbal Haider, Senator-in-charge of Human Rights (pending approval); Mr. M. Ashique Siddiqui, Secretary of the Ministry of Human Rights; General Naseeullah Babar, Minister of the Interior; Mr. Farooqi, Secretary of the Ministry for Foreign Affairs; Mr. G. Asgar Malik, Director General of the Federal Intelligence Agency; Mr. Qazi Mohammad Jamil, Attorney General of Pakistan; Mr. Saijad Ali Shah, Chief Justice of the Supreme Court of Pakistan.

3. In Karachi the Special Rapporteur held meetings with the following government officials: Mr. Nawid Ashraf, Home Minister for the Province of Sindh; Captain Muhammad Shoaib Suddle, Deputy Inspector-General of Police in Karachi; Captain Mohammad Akram, Deputy Inspector-General of the Rangers (a paramilitary force based in Karachi to help maintain law and order); Mr. Pir Shabir Ahmed Jan Sarhandi, Superintendent of Karachi Central Jail.

4. The Special Rapporteur also visited places of detention in Lahore and Karachi. In Islamabad the Special Rapporteur visited but was not allowed to enter a detention centre operated by the Federal Intelligence Agency (see paras. 22 to 30). In Lahore and Karachi he visited the central prisons of the respective cities and in Karachi he had the opportunity to visit a local police station. On his visit to Lahore Central Jail, the Special Rapporteur was accompanied by the Inspector General, Mr. Chaudry Mohammad Hussain Cheema, and the Deputy Inspector General, Captain Sarfraz Mufti, as well as the Superintendent and the Deputy Superintendent of the jail. The Special Rapporteur had anticipated visiting the women's prisons in Rawalpindi and Karachi, but was prevented from doing so by time constraints. However, he was able to speak with women prisoners held in Karachi Central Jail. Similarly, he had requested a visit to a Rangers' camp in Karachi but, again, time constraints did not allow for such a visit.

5. In addition to meetings with government officials and visits to detention centres, the Special Rapporteur also met, at the UNICEF Office in Karachi, a delegation from the Mohajir Quami Movement (MQM), which included Senator Syed Ishtiaq Azhar, Syed Shoaib Ahmed Bukhari, Deputy Leader of Opposition Sindh Assembly and member of the Provincial Assembly of Sindh, and Mr. Qazi Khalid Ali, also a member of the Provincial Assembly of Sindh and of MQM Legal Aid

Committee. Also in Karachi, Senator Haider organized a public meeting at which the Special Rapporteur heard the testimonies of victims or family members of victims of alleged MQM atrocities. The Special Rapporteur estimated that over one hundred individuals were prepared to provide testimony, but time constraints allowed him to hear only a limited number. Senator Haider invited journalists to be present at this public meeting and the meeting was widely reported in the press the following day.

6. The Special Rapporteur also met and held discussions with representatives of several non-governmental human rights organizations. In particular, he held meetings in Islamabad with Mr. Kamran Ahmad of the Centre for Democratic Development and of the Human Rights Commission of Pakistan (HRCP). The Ministry for Human Rights also hosted a luncheon in Islamabad at which several NGO representatives were present. In Lahore, the Special Rapporteur met with Ms. Asma Jahangir, Chairperson of HRCP, and Mr. I.A. Rehman, Director of the HRCP Secretariat. In Karachi, he met with Mr. Zia Ahmed Awan, President of Lawyers for Human Rights and Legal Aid; Ms. Zohra Yusuf, Secretary General of HRCP, Mr. Rao Abid, also of HRCP, Mr. Jameel Yusuf of the Citizens/Police Liaison Committee, Mr. Mohammed Akram Sheikh, President of the Supreme Court Bar Association, Mr. S.S. Pirzada, former Attorney General and Minister for Foreign Affairs of Pakistan and Justice Nizam Ahmed, a former judge of the Sindh High Court. The Special Rapporteur was disturbed to learn that after his departure from Karachi some of these individuals were questioned by security officials concerning the nature of their discussions with the Special Rapporteur. The Special Rapporteur was also distressed to learn of the murder of Justice Ahmed and his son Nadeem on 10 June 1996 by two unidentified assailants in Karachi following threats demanding that he withdraw a case that he had filed with the Sindh High Court in Karachi. On 16 July 1996, the Special Rapporteur sent a joint appeal with the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of judges and lawyers calling upon the Government immediately to investigate not only the murder of Justice Ahmed and his son, but also the threats received prior to the murder and to bring to justice those responsible for these crimes.

7. The Special Rapporteur would like to thank the Ministry of Foreign Affairs for the invitation to visit Pakistan. He would also like to thank the Ministry for Human Rights, which made most of the arrangements for the meetings and visits held during the mission. The Ministry worked with great diligence to arrange, under difficult circumstances, the meetings that the Special Rapporteur had requested and succeeded in respect of most of them. His request for a meeting with the Prime Minister was not acceded to. The Special Rapporteur also wishes to thank everyone, officials as well as private individuals with whom he held discussions during his visit; the valuable information they provided permitted him to understand better the current situation in the country.

8. The present report contains, in section I, a brief consideration of the context within which the visit occurred, particularly with respect to the situation in the country of matters concerning the work of the Special Rapporteur under his mandate. Section II describes the issue of unlawful

detention and the problems in this area observed by the Special Rapporteur during the course of his mission. Section III addresses the allegations of torture and other forms of cruel, inhuman or degrading treatment or punishment, including corporal punishment and the use of bar fetters by the police and prison officials. Section IV focuses specifically on the situation in Karachi, where it is estimated that over 1,800 people were killed in 1995. Section V discusses the question of impunity. Section VI contains the Special Rapporteur's conclusions and recommendations.

I. BACKGROUND AND CONTEXT

9. Pakistan is a parliamentary democracy, in the sense that the composition of the legislature is determined on the basis of competitive elections, the executive being formed by the party or coalition of parties capable of commanding a vote of confidence in the legislature. It is a federal State, whose provincial governments are elected in broadly the same way as the national Government. It is also an Islamic republic whose laws are expected to be or to be brought "in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah". For most of the period since independence in 1947 Pakistan has been ruled by military regimes, the last of which ended only in 1986. The present national Government, formed by the Pakistan People's Party (PPP), has been in power only since 1993. It does not control an absolute majority in Parliament. The press is generally acknowledged to be free and vigorous.

10. Responsibility for internal security rests primarily with the Ministry of the Interior, which exercises overall responsibility for most of the various police and intelligence forces. However, paramilitary forces, such as the Rangers acting in support of the civil forces in Karachi, are the responsibility of the Ministry of Defence, as are certain intelligence bodies, in particular, Military Intelligence. Direct responsibility for the police and some investigative bodies, as well as paramilitary forces acting in support of the civil power, is vested in the provincial governments.

11. Early in the life of her Government, the present Prime Minister, Ms. Benazir Bhutto, established a "human rights cell" headed by Mr. Kamran Rizvi, a former political prisoner during the martial law regime. The cell took up numerous cases of law enforcement arbitrariness. In 1995 the cell was promoted to a Ministry of Human Rights. The Ministry has various investigatory functions, but no apparent authority to compel redress of abuses. The Ministry having been established only in October 1995, it is too early to assess its effectiveness, actual or potential. At the time of the Special Rapporteur's visit, it did not have the authority to secure the Special Rapporteur's access to an unofficial place of detention (see below, para. 23). In early August 1996, the Senator-in-charge of Human Rights Affairs, Mr. Iqbal Haider, was appointed Minister for Human Rights.

12. Pakistan has signed and ratified the following international human rights instruments: International Convention on the Elimination of All Forms of Racial Discrimination; International Convention on the Suppression and Punishment of the Crime of Apartheid; Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Rights of the Child;

Slavery Convention of 1926 as amended; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of Others. It has not, however, signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment nor the International Covenant on Civil and Political Rights.

13. For much of its history, Pakistan has been plagued by violent conflict between different religious, ethnic and political groups. In recent years, this situation has been exacerbated by the large flow of weapons into Pakistan through the refugee camps along the Pakistani-Afghan border. As a result, many of the factions within the country are heavily armed and pose a genuine threat to internal security. Violent crime is also a serious problem throughout the country, particularly in the major urban centres such as Karachi and Lahore.

14. For the past several years, the Special Rapporteur has reported annually to the Commission on Human Rights on the allegations he has received indicating that torture of persons in the custody of the police, the paramilitary and the armed forces is endemic, widespread and systematic in Pakistan. Torture was allegedly inflicted to obtain information, to punish, humiliate or intimidate, to take revenge or to extract money from detainees or their families. The methods of torture reported include: rape; beatings with sticks, hose pipes, leather belts and rifle butts; kicking with heavy boots; being hung upside down; electric shocks applied to the genitalia and knees; cheera (forced stretching apart of the victim's legs, sometimes in combination with kicks to the genitalia); sleep deprivation; prolonged blindfolding; and boring of holes with an electric drill into parts of the victim's body.

15. The Special Rapporteur also received reports that the police often use excessive and disproportionate force during crowd control operations. While conducting house-to-house searches during operations in Karachi between June 1992 and November 1994 and beginning again in May 1995, the army would cordon off entire sections of the city, most frequently Liaqatabad, Lines Area, Shah Faisal Colony and Paposh Nagar, and allegedly round up, detain, blindfold and beat individuals. MQM activists were reported to be particularly targeted during such operations.

16. Reports were also received by the Special Rapporteur alleging that the substantial majority of women held in police custody are subjected to some form of sexual abuse, including rape. Registering a rape complaint was said to be problematic because the Islamic Zina Ordinance of 1979 reportedly makes it difficult for a woman to meet the evidentiary requirements to establish her case. Failure to establish such a case reportedly exposes the complainant to a potential charge of illicit sexual intercourse, an offence punishable under the Ordinance with 80 lashes or, if the woman is married, death by stoning. It was further alleged that when the alleged perpetrator of rape is a member of the police, army or other governmental official, the police often refuse to register a complaint, or pressure or bribe the victim into dropping the charges.

II. UNLAWFUL DETENTION

17. Unlawful detention as such is not a matter directly within the mandate of the Special Rapporteur. However, it can provide the environment in which torture can flourish. This is precisely what has been frequently alleged to be the case in Pakistan.

18. Article 10 (1) of the Constitution of Pakistan states, "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice". Article 10 (2) states, "Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest". Similarly, section 61 of the Criminal Procedure Code provides that "no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court". Section 167 does allow the police to detain in custody a person arrested without warrant for a term not exceeding 15 days "where the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded". However, the officer-in-charge of the police station or the police officer making the investigation must still transmit to the nearest Judicial Magistrate a copy of the entries in the diary relating to the case, and shall at the same time forward the accused to such Magistrate. Further, the law permits a deputy commissioner of a local district to order detention without charge for 30 days of persons suspected of threatening public order and safety. The deputy commissioner may renew detention in 30-day periods, for a total of 90 days.

19. In practice, the authorities do not strictly observe these limits on detention. The Special Rapporteur was informed that the police often hold detainees without charge until they are challenged by a court. It is also alleged that the police sometimes detain individuals arbitrarily without charge, or on false charges, in order to extort payment for their release. These allegations were corroborated by prisoners with whom the Special Rapporteur spoke in the Central Jails of Karachi and Lahore. Torture and other forms of ill-treatment are also facilitated by the widespread practice of holding prisoners in incommunicado detention, sometimes in premises not designated for the purpose. In such undeclared places of detention, law enforcement personnel are able to commit human rights violations with impunity since legal safeguards against ill-treatment cannot be enforced and detection is unlikely.

20. During his mission, the Special Rapporteur received numerous reports on the use of unauthorized detention centres by the various branches of government that deal with law and order, including the police, army and intelligence agencies. In one case, the Special Rapporteur received testimony from an individual who alleged that he had been held without charge in incommunicado detention for several months in a "safe house" on the outskirts

of Islamabad towards Faizabad, operated by the Federal Intelligence Agency (FIA). This individual claimed that he was kept blindfolded and fettered in the basement of the "safe house" during the entire period of his detention. He was unable to indicate the number of prisoners held on the premises, but knew that three rooms in the basement were used for holding prisoners and that other rooms of the house were also sometimes used for this purpose. Further, he claimed that the prisoners were removed each night and taken to another "safe house" in Islamabad, where they were interrogated under torture. The individual was able to provide the Special Rapporteur with the exact locations of each "safe house".

21. At his meeting with the Director General of FIA on 26 March, which took place before he received the testimony referred to in the previous paragraph, the Special Rapporteur had asked if there was any validity in the general reports he had received concerning the use of FIA "safe houses" for detention. The Director General denied these general allegations, stating that under the Constitution and the Code of Criminal Procedure a criminal suspect must be brought before a magistrate within 24 hours of his detention. Although FIA operated its own police stations, the Director General emphasized that it could not hold anyone without warrant without the authorization of a judicial magistrate. The Director General also declared, as did every other official with whom the Special Rapporteur met, that he was free to visit any location and to speak with anyone he chose.

22. On 28 March the Special Rapporteur made an unannounced visit to the first of the "safe houses" referred to in paragraph 20. He was accompanied by an official from the Ministry of Human Rights who did not have prior knowledge of the delegation's destination until it had departed for the "safe house".

23. The "safe house" appeared to be a private home in a residential neighbourhood of Islamabad. The residence was surrounded by a concrete wall that was approximately six feet high. The only indication that this was not an ordinary residence was the presence of armed guards stationed outside the front door. When the Special Rapporteur approached the house he was greeted at the front gate by two police constables, who explicitly stated that the residence was a facility of FIA (a "rest house"). The constables denied access to the premises despite the intervention of the official accompanying the Special Rapporteur. They said the delegation would need authorization from the Director General of FIA to enter the premises or to speak with anyone inside.

24. The Special Rapporteur waited outside the premises while telephone calls were made to FIA headquarters, the Ministry of the Interior and the Ministry of Human Rights to receive authorization to enter. The delegation remained outside the house for two hours waiting for this authorization. Shortly after the delegation requested entry, a more senior police officer arrived on foot from a nearby police station. He informed the Special Rapporteur that his request would be honoured if he first came to the Police Headquarters to meet with the Superintendent. The Special Rapporteur replied that authorization could be granted over the telephone while the delegation remained at the house. After approximately an hour, a senior FIA official arrived and

requested the Special Rapporteur to come to FIA headquarters to receive authorization to enter the premises. The Special Rapporteur reiterated his view that the authorization could be conveyed by telephone.

25. While the Special Rapporteur waited for the authorization, a member of the delegation spoke with private citizens close by the house. These individuals informed the member of the delegation that the detainees were held only in the basement. They also indicated that approximately 16 individuals were currently being held there and that there were armed guards on the roof of the house and inside, in addition to the two armed guards stationed outside the front door. A member of the delegation counted some eight policemen in the yard between the door and the gate during the period the delegation was there.

26. After one and a half hours a bus and two four-wheel vehicles arrived at the house. The Special Rapporteur could only assume that these vehicles had been sent to transport prisoners detained inside the house. After two hours the Special Rapporteur decided that it was futile to remain any longer as it had become clear that authorization to enter the house was being denied at the highest level of the Ministry of the Interior.

27. The Special Rapporteur immediately met with the Secretary of the Ministry of Human Rights and senior officials of the Ministry of Foreign Affairs to protest at the denial of access to the house, which he considered to be a clear violation of the terms of reference of the mission. These officials indicated that the Special Rapporteur was free to return to the house and inspect the premises. This offer was reiterated in a later telephone conversation with Senator Iqbal Haider. The Special Rapporteur considered that to return to the house would serve no useful purpose.

28. The Special Rapporteur subsequently received further information indicating that FIA operates incommunicado detention centres or "safe houses" in Islamabad. Dr. Munawar A. Halepota, Secretary-General of the World Sindhi Congress and Human Rights International, provided testimony to the Special Rapporteur that he was arrested without charge on 28 November 1995 and initially held in the Tando Allahyar police station for two days. He was then transferred on 30 November to the Central Investigation Agency Centre in Hyderabad. On 4 December he was handed over to FIA and transferred to Islamabad for further interrogation. From 4 to 18 December, Dr. Halepota was held in FIA custody at a "safe house" between Islamabad and Faizabad. Based upon the description provided by Dr. Halepota, the Special Rapporteur believes this facility to be the one to which he was denied access during his mission. Dr. Halepota was subsequently deported from Pakistan to the United Kingdom.

29. The treatment received by Dr. Halepota was the same as that received by the individual who provided testimony to the Special Rapporteur on the FIA "safe house". In both cases, the detainees were kept in a dark, cold, damp room in the basement, which, Dr. Halepota testified, is referred to as the "refrigerator". Both were made to sleep on a concrete floor. Dr. Halepota informed the Special Rapporteur that during his detention many Egyptians were held in the "safe house" in connection with the embassy bombing that occurred in 1995. He claims that they were taken regularly to be tortured.

(Dr. Halepota did not claim that he himself was subjected to interrogation under torture.) In both the case of Dr. Halepota and that of the individual who provided testimony to the Special Rapporteur during his stay in Islamabad, FIA, in response to inquiries from their families, denied that they were being held. In neither case were the detainees formally charged with any crime, nor were they ever brought before a magistrate or allowed to contact a lawyer or their families.

30. Given the coincidences in testimony, the substantial body of police guarding the facility (an exorbitant number for a "rest house"), the arrival and departure during the Special Rapporteur's visit of vehicles capable of transporting persons and the refusal of access to the Special Rapporteur, as well as other information the Special Rapporteur does not, in the interests of others' safety, deem it prudent to disclose, the Special Rapporteur is constrained to conclude that the place was an FIA "safe house" where unlawfully detained persons were held, usually for interrogation under torture elsewhere, and that such persons were so held at the time of the Special Rapporteur's visit.

31. Upon his arrival in Karachi, the Special Rapporteur received information alleging that seven individuals had been arrested without warrant in Karachi and fears were expressed that they might be subjected to torture or extrajudicial killings. According to the information, Syed Ashraf Ali, Syed Naushad Ali, Syed Nusrat Ali and Mohammad Saleem were arrested at 1 a.m. on 29 February 1996 and Tanvir Adil Siddiqui, Ovais Siddiqui and Azizi Mustafa were arrested on 27 February 1996. The source had no information on those responsible for the arrests without warrant. Based upon this information, the Special Rapporteur issued an appeal on 1 March 1996 calling upon the Government of Pakistan to take the necessary steps to ensure and protect the physical integrity of the persons who had been arrested.

32. At a meeting with the Deputy Inspector-General of Police for Karachi, the Special Rapporteur inquired whether the Deputy Inspector-General had any information on the arrest of these seven individuals. He replied that he had no information at that time, but assured the Special Rapporteur that he would investigate the matter and provide the Special Rapporteur with any information he was able to collect.

33. At a meeting on 3 March 1996 with the Deputy Inspector-General of the Rangers for Karachi, the Special Rapporteur asked whether the Rangers had possibly detained the seven individuals. The Deputy Inspector-General of the Rangers replied that it was not possible for the Rangers to have detained those individuals, having no authority under Pakistani law to hold suspected criminals. He indicated that while the Rangers did have the authority to arrest individuals suspected of criminal activity and to interrogate the suspects, they must turn the individuals over to the police within 24 hours. In this particular case, he stated, six of the individuals had been arrested by the Rangers; five of them had been handed over to the police on 28 February and Ashraf Ali had been handed over on 29 February. He also indicated that the six individuals had been taken to a police station house in Central District of Karachi and that they were currently being held in the Central Jail of Karachi.

34. At a follow-up meeting with the Inspector-General and Deputy Inspector-General of Police for Karachi, the latter contradicted the Deputy Inspector-General of the Rangers, stating that seven individuals had been brought to the police station house in Central District, but that the police had then immediately returned the individuals to the Rangers for interrogation at a Ranger camp where they were still being detained. Although this would appear to be a violation of Pakistani law, it is consistent with widespread reports the Special Rapporteur received from NGOs and lawyers indicating that the Rangers detain criminal suspects at their camps.

35. In a communication dated 26 March 1996 from the Ministry of Foreign Affairs, the Government of Pakistan transmitted the following information to the Special Rapporteur: Tanvir Adil Siddiqui (son of Tanzim Ahmed Siddiqui), Juaid son of Tanzim Ahmed Siddiqui and Umair Adil Siddiqui were arrested on 28 February 1996 at Temouria Karachi Central Police Station under various provisions of the Pakistan Penal Code and Arms Ordinance; S. Ashraf Ali (Sharafat son of S. Hashmad Ali), Nusrat Ali (son of S. Hashmad Ali) and Noshad Ali (son of S. Hashmad Ali) were arrested on 29 February at Police Station New Karachi, also under various provisions of the Pakistan Penal Code and Arms Ordinance. All the above-mentioned individuals had been remanded by the concerned courts to judicial custody and were confined in Central Prison, Karachi. In this communication, it was also stated that Azizi Mustafa, Waseen Siddiqui (son of Tanzim Ahmed Siddiqui) and Muhammad Saleem had not been arrested by the police or by the Rangers.

36. The Deputy Inspector-General of Police for Karachi informed the Special Rapporteur that, as an additional safeguard to prevent arbitrary detention by individual station house officers, he had initiated a policy under which a duty officer has been assigned to each station house in Karachi. It was that officer's responsibility to register all individuals who have been arrested and to report to the Deputy Inspector-General of Police if the proper procedures had not been followed. That duty officer was under his direct command rather than that of the station house officer.

37. During his visit to a police station house in Karachi, on 1 March 1996, the Special Rapporteur had the opportunity to see how this policy was being implemented. The duty officer explained to the Special Rapporteur that the date and time of all arrests made within the precinct of the police station house must be immediately recorded in the register. However, the duty officer does not record the presence of an individual who had been brought to the station house for interrogation but who has not been arrested. That information was registered in the daily diary of the station house. Upon inspection, the Special Rapporteur noted that the last entry in the register had been made on 26 February. Furthermore, there was no record in the daily diary of anyone having been interrogated between 26 February and 1 March. The duty officer was clearly of much lower rank than the station house officer and appeared to the Special Rapporteur to evince distinct signs of nervousness, tending to look in the direction of the station house officer before responding to the Special Rapporteur's questions.

38. The Special Rapporteur also spoke in private to two individuals who were being held in the lock-up at the station house, both of whom had been

registered. The first claimed to have been arrested on 25 February and brought before a magistrate on 26 February. The register, however, indicated that the individual had been arrested on 21 February. The second detainee claimed to have been arrested on 18 February, but the date recorded in the register was 22 February. Further, the register indicated that the detainee had not been brought before a magistrate until 26 February. Therefore, even if the date of his arrest had been accurately recorded by the duty officer, he had not been brought before a magistrate within the 24-hour period prescribed by law.

III. TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

39. There are legal provisions under Pakistani law to protect the individual from acts of torture. The Constitution of Pakistan explicitly prohibits torture under article 14 (2), which provides that "No person shall be subjected to torture for the purpose of extracting evidence". Further, under the Qisas and Diyat Ordinances, the causing of hurt by any person to extort "any confession or any information which may lead to the detection of any offence or misconduct" is defined as a distinct punishable offence. Similarly, article 337 k of the Pakistan Penal Code states:

> "Whoever causes hurt for the purpose of extorting from the sufferer, or any person interested in the sufferer, any confession or any information which may lead to the detection of any offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore, or to cause the restoration of, any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security shall, in addition to the punishment of qisas, arsh or daman, as the case may be, provided for the kind of hurt caused, be punished, having regard to the nature of the hurt caused, with imprisonment of either description for a term which may extend to ten years as ta'zir."

40. The Law of Evidence also provides certain legal safeguards. Article 37 provides that:

> "a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused persons grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

Moreover, "no confession made to a police officer shall be permissible against a person accused of any offence" (art. 38) and "no confession made by any person whilst he is in custody of a police officer unless it be made in the immediate presence of a Magistrate shall be proved as against such person" (art. 39).

41. Despite these legal safeguards, torture, including rape, in the custody of the police, paramilitary forces and the army, as well as in jails, is widely reported by national and international NGOs (see paras. 7 and 8).

42. In one well-publicized case brought to the attention of the Special Rapporteur during his mission, a detainee in a Lahore police station had been stripped naked, his hands and feet had been tied and he had been hung by them from bamboo canes. A photograph of this brutal incident appeared in a Lahore daily newspaper. The photograph clearly identifies the station house officer of the police station, shown observing uniformed police officers beating and whipping the detainee. When the Special Rapporteur brought the photograph to the attention of his interlocutors from the Ministry of Human Rights, they stated that the incident had been investigated and that the officer in question had been suspended from his position. However, they conceded that no criminal charges had been brought against either that officer nor the police officers who had inflicted the treatment. Further, the Special Rapporteur learned that the station house officer had been suspended for only a brief period and that he had resumed his duties after being transferred to a different station house.

43. In another well-publicized incident, four MQM activists under trial had been photographed on 29 May 1995 as they were brought blindfolded to the Special Court for the Suppression of Terrorist Activities in Karachi. Eyewitnesses reported that the individuals showed signs of having been severely tortured; one of the four had a drilled left buttock, another had a fractured right leg, a third had an injured left leg and hip, and the fourth had torture marks all over his body. According to press reports of the incident, the police claimed to have arrested them after an encounter on 27 May, while the counsel for the accused claimed that they had been arrested at their homes on 6 May. It was reported that the presiding officer of the Court had ordered the jail authorities to conduct a medical examination of all four and send a report to him, but the police had allegedly ignored that order and instead had taken the four to an unidentified police station. Subsequent reports received by the Special Rapporteur indicated that several low-ranking police officials had later been suspended for bringing the accused blindfolded to the Court, but the Special Rapporteur was not informed of any police investigation into the allegations of torture.

44. Reports received by the Special Rapporteur during the mission indicated that a large number of individuals had died in custody under suspicious circumstances during 1995. In the province of Sindh, excluding Karachi, there had been 62 suspicious deaths of persons held in custody. They included deaths in police custody after allegations of torture, deaths after release or transfer to hospital of which torture was suspected as the cause, deaths in fabricated police encounters, deaths in prison as a result of torture and deaths in prison due to a lack of proper medical care. In Karachi alone, it is alleged that there were approximately 200 deaths in 1995 as a result of torture in custody.

45. As noted above, the Special Rapporteur visited the central jails of Lahore and Karachi where he interviewed numerous prisoners selected at random. Although some of these interviews were held in the presence of prison officials, the conversations between the Special Rapporteur and detainees

could not be overheard. Despite this modicum of privacy, many detainees expressed concerns that they would suffer reprisals following the departure of the Special Rapporteur, and therefore, some, but not all, mainly in Karachi, refused to provide any testimony about possible abuses on the part of the police, Rangers or prison staff. The Special Rapporteur notes with concern that upon his return from Pakistan he received a letter signed by inmates of Karachi Central Jail who claimed that they had been denied permission to meet with the Special Rapporteur and that they had been moved prior to his visit because they could provide testimony of the torture that is inflicted upon the prisoners by the staff of the jail.

46. Most of the prisoners who dared to speak claimed to have been ill treated while in custody and/or to have witnessed the ill-treatment of other prisoners. The ill-treatment described included beatings, burning with cigarettes, whippings with rubber or leather straps, sexual assault, being hung upside down for prolonged periods, electric shocks, deprivation of sleep, mock executions, the use of fetters, blindfolding for periods of up to 16 days and public humiliation. Although many of these prisoners claimed that the police, Rangers and prison officials had used force to elicit confessions and to compel detainees to incriminate others, some indicated that the force was used to extort money or merely to humiliate individuals. Marks of torture were visible on several of the prisoners; one prisoner removed his shirt to show the Special Rapporteur the large welts on his back caused by whippings with a leather strap.

47. In the testimony describing his detention from 30 November to 4 December 1995 at CIA headquarters in Hyderabad (see paras. 28 and 29 above), Dr. Halepota testified that he was held in what the officials called the "torture cell" and interrogated by a joint interrogation team of CIA and military intelligence. Although he himself was not ill treated physically, he claimed to have witnessed the torture of 11 inmates. The other inmates were allegedly subjected to blindfolding, beatings with fists and implements, incisions on their skin with blades, whippings with wooden strips, being hung upside down and deprivation of food and water.

48. With regard to the custody of women, a 1994 amendment to the Criminal Procedure Code prohibits a magistrate from authorizing the detention in police custody of a female except in cases involving qatl (murder) or dacoity. This amendment also requires the police officer undertaking investigation of a female to interrogate the accused in the prison in the presence of an officer of the jail and a female police officer. Despite these safeguards, the Special Rapporteur received numerous allegations of women being held in police custody and raped. The Special Rapporteur regrets that he was unable to investigate these allegations during the mission, but he took note of several cases reported by the Human Rights Commission of Pakistan in which policemen were charged with rape.

49. During the mission, the Special Rapporteur also received reliable reports that medical care is frequently denied to detainees who have been seriously injured or are seriously ill. One case presented to the Special Rapporteur concerned a young man, Ghulam Hyder, who had been shot by the police during the course of his arrest. The gunshot wound had left him paralysed and his health had further deteriorated while in custody at Karachi Central Jail.

His family claimed that he had been denied proper medical treatment and was dying as a result. The Chief Minister of Sindh had issued an order on 6 February 1996 for the patient to be transferred from the Central Jail to Jinnah Hospital. During his visit to the Central Jail on 2 March 1996, the Special Rapporteur requested permission to visit Ghulam Hyder, but he was informed by the superintendent of the prison that he had been transferred to a civil hospital on 1 March. Another prisoner in Karachi Central Jail showed the Special Rapporteur sores on his legs that had become infected, yet his request for medical treatment had been denied.

A. Use of fetters

50. Prior to his mission, the Special Rapporteur received numerous reports concerning the use of fetters as a means of restraint and as a means of punishment. The most common fetter used in Pakistan is the bar fetter, although it is reported that cross fetters and link fetters or chains are used also. Bar fetters consist of iron rings locked around the ankles of prisoners; an iron bar is riveted to each of these iron shackles making an inverted "V". These two vertical bars are about 50 cm long and are linked at mid-thigh level by an iron ring which the prisoner must hold or which is connected to a rope or chain around the waist. The rods are of a standard length and, thus, men who are not of average height may suffer when the bars are too long or too short for them, thereby adding to the normal discomfort experienced in wearing bar fetters. The iron bars are about 1.2 cm in diameter and weigh, together with the ankle shackles, around 4 kg. Cross fetters are iron bars about 50 cm in length attached in addition to bar fetters and placed between the iron rings around the ankles keeping the prisoners' legs permanently apart at the bar's length.

51. An inheritance from colonial times, the Prisons Act of 1894 and the Prison Rules of Pakistan permit the use of bar fetters and chains as instruments of restraint and punishment under certain circumstances. The Prisons Act of 1894 provides in section 46 that the jail superintendent may punish a prisoner for so-called "prison offences", i.e. acts of wilful disobedience against prison regulations, including assaulting wardens or fellow prisoners, indiscipline or destruction of prison property and attempts to escape. The punishments allowed include the imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the provincial government (sect. 46 (7)). Fettering may not be imposed by officers below the rank of superintendent except in case of "urgent necessity". Section 56 states that "whenever the Superintendent considers it necessary for the safe custody of any prisoners that they should be confined to irons, he may, subject to such rules and instructions as may be laid down by the Inspector General with the sanction of the Provincial Government, so confine them". Although the fettering of a prisoner may normally not extend beyond three months, section 57 (2) permits the superintendent to apply to the Inspector General for sanction of more extended fettering of a prisoner if he considers it "necessary, either for the safe custody of the prisoner himself or for any other reason".

52. Chapter 27 of the Prison Rules (Rules 643 to 655) set forth more precise regulations concerning the use of fetters. Pursuant to Rule 643, "the Superintendent may, at his discretion, require all or any prisoners to wear

fetters while confined in any place outside walls of the prison". However, under Rule 644 (i), "No convicted prisoner inside the prison other than a camp or temporary prison shall be fettered except on the ground that he is violent, dangerous or had escaped or attempted to escape". Rules 650 and 651 establish respectively the categories of prisoners who are exempted absolutely and ordinarily exempted. Rule 645 provides that "imposition of fetters and handcuffs requires the order of the Superintendent, and the Deputy Superintendent or Assistant Superintendent shall not order any prisoner to be put in fetters or handcuffs on his own authority except in the case of emergency in which case a report shall be made to the Superintendent in writing on his next visit to the prison".

53. Rule 646 states, "If the Superintendent considers it necessary to impose fetters on any convicted or under-trial prisoner he shall record on the history ticket the reason for the imposition of the fetters and the period for which these are imposed. The date on which the fetters are actually removed shall also be noted on the history ticket". Further, pursuant to an amendment of 18 July 1988, "A record shall also be kept in the Fetters Register given the number and name of the prisoner, the date on which fetters were imposed and the reason for considering use of fetters necessary. The date on which fetters are actually removed shall also be noted in the register".

54. As noted above (para. 4), the Special Rapporteur visited Lahore and Karachi Central Jails. During his visits to these locations, the Special Rapporteur did not see one prisoner with bar fetters. Consequently, given that their usage in prisons is reputedly commonplace and open, the Special Rapporteur made specific requests to the respective Superintendents, and, in the case of Lahore, to the Inspector General, to visit a prisoner wearing fetters. In each case, the Superintendents or Inspector General responded that they currently had no prisoners wearing fetters. They acknowledged that fetters were used when prisoners were transported to the courts or to other facilities, but indicated that the imposition of fetters inside the prison was normally not necessary. In Lahore, the Inspector General and the Superintendent initially denied that they even had fetters available to show the Special Rapporteur. However, at his insistence, a bar fetter as described above (para. 50) was shown to the Special Rapporteur. Furthermore, during the visit to the punishment cell block of Lahore Central Jail, in which a large number of the cells were completely empty, a member of the delegation saw approximately a dozen leg irons neatly stacked against the wall of an empty cell.

55. In Lahore, where the Special Rapporteur had more time to inspect the facilities and to receive testimony from prisoners, he questioned prisoners in the punishment cells as to why he saw no bar fetters. One prisoner indicated that they had all been removed the previous evening in anticipation of the Special Rapporteur's visit. He also indicated that prisoners had been removed from the now empty cells in the punishment cell block.

56. On the basis of this testimony, which was corroborated by other prisoners who agreed that fetters had been removed from some 200 to 300 prisoners, the Special Rapporteur requested to see the Fetters Register. He inspected several pages of the register, which contained a list of several hundred names and the dates on which fetters had been imposed. However, most of these

entries did not include a date on which the fetters had been removed. After the Special Rapporteur had reviewed several pages, going back to June 1995, on which the removal date was not recorded, the Inspector General conceded that the bar fetters had been removed the previous evening. At Karachi Central Jail, which the delegation visited a few days later, all the relevant information was properly recorded in what was presented as the Fetters Register Entries. Entries were neatly written in what appeared to be the same hand and the same ink. The only reason noted for the imposition of fetters was for the purposes of transfer from the jail.

57. The Standard Minimum Rules for the Treatment of Prisoners provide:

> "Instruments of restraint such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:
>
> (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
>
> (b) On medical grounds by direction of the medical officer;
>
> (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority." (Rule 33).

Rule 34 states, inter alia, that "such instruments must not be applied for any longer time than is strictly necessary". The widespread practice in Pakistan of using bar fetters as a means of restraint or punishment of prisoners inside prisons for extended periods, confirmed by the Special Rapporteur's inspection of the fetters register at Lahore Central Jail, is a clear violation of the Standard Minimum Rules and can be considered a form of inhuman and degrading treatment.

58. Justice Nizam Ahmad of the Sindh High Court came to a similar conclusion following his inspection of the security wards and bund wards (punishment cells) of Karachi Central Jail in February 1993. He stated:

> "The condition of most of the prisoners who were kept in security/bund wards was pathetic and pitiable. The manner in which they were kept was against the dignity of a human being. Many of them were kept in a cell having an area of a few square feet, in solitary confinement with bar fetters on. If a comparison of the conditions of these prisoners is possible, then it can only be made with the animals in a zoo ... [which] are better placed as they have no bar fetters inside their cages and they are provided with better facilities." 1/

59. These observations of Justice Nizam Ahmad are contained in a landmark decision by the Sindh High Court holding that the relevant sections of the

Prisons Act of 1894 (sects. 46 (7) and 56) and the Prison Rules (Rules 643-655) are unconstitutional. In the decision, the High Court concluded:

> "The manner in which the prisoners are kept in the Security/Bund Wards with bar fetters on is humiliating and against the dignity of man. Loss of one's freedom and confinement is in itself a very severe punishment. After locking up a man, to inflict further punishment is not only harsh but inhuman and against the cherished human values." 2/

Accordingly, the High Court held the relevant provisions concerning fetters to be "inconsistent and in violation of Article 14 of the Constitution as well as against injunctions of Islam. As such they are declared as void and as of no legal effect". Article 14 (1) of the Constitution of Pakistan provides: "The dignity of man ... shall be inviolable." 3/

60. In a similar decision, the Punjab High Court in Lahore, in November 1994, asked the government of Punjab within six months to bring the prison rules in Punjab regarding the use of fetters into conformity with constitutional provisions. It held that the unbridled discretion of prison superintendents to place fetters on prisoners was inconsistent with article 14 of the Constitution. However, in contrast to the Sindh High Court, the Punjab High Court did not call for the total abolition of the use of fetters, but argued that the superintendent's powers should be clearly circumscribed to bring the rules into conformity with article 14. 4/

61. On 31 March 1994, the Supreme Court of Pakistan admitted the appeal of the Additional Advocate General of Sindh against the judgement of the Sindh High Court prohibiting the use of bar fetters. At the same time it issued an interim stay regarding the implementation of that judgement pending a decision by the Supreme Court. In its appeal, the Sindh government argued that to abolish the use of bar fetters would render the safe custody of dangerous prisoners very difficult. To date, the Supreme Court has not begun hearing the appeal. During meetings with the Attorney General of Pakistan and the Chief Justice of the Supreme Court, the Special Rapporteur inquired whether a date had been set for the hearing of the appeal to begin. Neither official was able to provide the Special Rapporteur with a definitive date for the hearing.

62. Prior to the finalization of the current report, the Special Rapporteur received photographs that appeared on 24 July 1996 in the respected daily newspaper Dawn and two Sindhi language daily newspapers. Three photographs show several detainees, blindfolded with their own shirts, in bar fetters, cross fetters and link fetters in Hyderabad Central Jail. The article accompanying the photographs reported on the overcrowded conditions in the prison (2,635 prisoners were held in the prison despite a capacity for only 1,527 prisoners) and noted that the use of chains, cross-bar fetters and handcuffs prevents the detainees from sleeping or moving about in the cells. The Inspector General of Prisons refuted the contents of the article, claiming that the photographs were fake. Furthermore, the jail authorities lodged a complaint against the photographer for public mischief, cheating and dishonestly inducing delivery of property, and forging documents.

B. Corporal punishment

63. At the time of the Special Rapporteur's visit there were three types of circumstances under which physical punishment could be imposed. They were: (i) as a judicially imposed punishment for certain ordinary criminal offences; (ii) as a punishment for certain offences for which the penalty is prescribed by Islamic law; and (iii) as a punishment for breach of prison discipline.

64. As regards judicial corporal punishment for ordinary crimes, again the practice was inherited from the colonial period. Generally the crimes for which whipping was prescribed were laid down in the 1909 Whipping Act. The maximum number of lashes or "stripes", as they are candidly called, was 30 (Code of Criminal Procedure 1898, sect. 392).

65. Until the martial law period (1977-1985), the ordinary courts had in recent times refrained from imposing corporal punishment. However, with the introduction of the Hudood Ordinances in 1979, purportedly to give effect to Islamic law, there was renewed use of corporal punishment for ordinary crimes. For example, Amnesty International cites Pakistani media as reporting that, as recently as 8 October 1995, two Irishmen were flogged with five lashes in Peshawar Central Jail on conviction for smuggling hashish. Medical staff of the jail were reported to have supervised the punishment, presumably pursuant to the provisions of the Execution of the Punishment of Whipping Ordinance 1979, which superseded relevant provisions of the Criminal Procedure Code.

66. By the time of writing of the present report the Abolition of the Punishment of Whipping Act 1996 had been enacted. This legislation was proposed by the Government of Pakistan in November 1995, because the punishment of whipping was, in the words of the Bill (proposed law), "considered as violative of human dignity and ... vehemently resented". Section 3 of the Act provides: "Except in cases where the punishment of whipping is provided for as Hadd, no court shall award a sentence of whipping under any law for the time being in force." By section 4 of the new Act, the 1909 Whipping Act is repealed.

67. This positive development now makes judicial corporal punishment for ordinary crimes a historical relic and may be expected substantially to reduce the incidence of such cruel, inhuman and degrading punishments.

68. As noted, the Abolition of the Punishment of Whipping Act explicitly preserves whipping provided for as hadd. A hadd (plural hudood) is an offence laid down in the Quran, for which the penalty is also laid down in the Quran or the Sunnah. In Pakistan, the offences and penalties concerned were enacted by the martial law administration through the 1979 Islamic Hudood Ordinances. Various of these provide for corporal punishment.

69. The Hudood Ordinances both enact the pure hadd with the corresponding punishment and legislate for related offences with specified punishments (ta'zir). The hadd is normally narrowly defined and subject to strict procedural and evidentiary requirements. Where the relevant conditions for a hadd are not met, a related offence may apply. Public flogging is provided for in respect of several of the related offences; however, the Special

Rapporteur believes that it must now be understood as abrogated by the Abolition of the Punishment of Whipping Act. Since most of the physical punishment meted out in Pakistan under the Hudood Ordinances has been in respect of the related offences, the incidence of such punishment may also be expected to be sharply reduced.

70. As regards the pure hudood, the Ordinances remain in force. Thus, the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, provides for punishment of illicit sexual relations (that is, sexual relations outside marriage). The prescribed punishment is 100 lashes, except in the case of rape or adultery, where the punishment is death by stoning. The Offence of Qazf (Enforcement of Hadd) Ordinance, 1979, provides for wrongful imputation of zina to be punished by 80 lashes. The existence of this offence has been alleged to deter denunciations of rape, because, if the alleged perpetrator is acquitted, the alleged victim may be prosecuted under this Ordinance. The Offence against Property (Enforcement of Hudood) Ordinance, 1979, provides for amputation of the hand for theft. Under the Prohibition (Enforcement of Hadd) Order, 1979, 80 lashes are prescribed for the consumption of alcohol. Under the Execution of the Punishment of Whipping Ordinance, 1979, whipping is carried out in a public place in the presence of an authorized medical officer, who is charged with ensuring that death does not occur.

71. According to Amnesty International, "hadd punishments have so far almost always been overturned on appeal by the higher judiciary". 5/ The explanation given to the Special Rapporteur by spokespersons of the Government as to why the Abolition of Punishment of Whipping Act did not also cover the hadd punishments was that it was unlikely that there would be sufficient support in Parliament for such legislation. The Special Rapporteur found the explanation disappointing but convincing.

72. The Abolition of the Punishment of Whipping Act appears to leave untouched the provisions of the Pakistan Prisons Act, 1894 and the Pakistan Prison Rules. These provide that the superintendent of the jail may award up to 30 lashes (up to 15 lashes for children under 16 years old) for serious prison offences committed by male criminal prisoners. The Special Rapporteur did not receive information permitting him to assess the extent of the use of whipping as a punishment in prisons. Clearly such punishments violate the Standard Minimum Rules for the Treatment of Prisoners, according to Rule 31 of which corporal punishment shall be completely prohibited as punishment for disciplinary offences.

C. Other aspects of imprisonment

73. Pursuant to rule 294 of the Prison Rules, juvenile prisoners, who are defined in the case of males as those who at the time of conviction are under 18 years of age, are to be separated from adult prisoners. Rule 295 provides:

> "All juveniles shall receive careful individual attention. The features of their treatment will be (1) sustained work; (2) physical, mental and moral training with a view to teach them self-discipline; and

(3) careful arrangement for their future after discharge. The aim of prison treatment shall be to give the young offenders whose mind and character are still pliable, such training as is likely to create in them a high standard of social behaviour."

74. Despite these strict rules, during his visit to the Karachi Central Jail the Special Rapporteur saw a juvenile detained in Ward 2 of the Security Cells, which is for prisoners awaiting execution. The juvenile informed the Special Rapporteur that he was 17 years old and that he had been convicted of murder when he was 15 years old. The boy's file did not contain his age, but his youthful features belied the authorities' claim that he was an adult. The boy was held in a cell with seven other adults, all of whom had been convicted of murder and were awaiting the death sentence.

75. The Special Rapporteur visited the women's section of Lahore Central Jail and was able to speak with some of the women prisoners. None of the women complained of ill-treatment and the conditions within the women's section were far superior to those found in the cells for men. All the women were provided with beds and clean linen and the ward was clean and supplied with electricity and running water, in contrast to the male prisoners who slept on the concrete floors of their cells, which were dark and dank, dirty and overcrowded. The Special Rapporteur spoke to five foreign women who were held in separate quarters. Two of the women claimed to have been ill treated during police custody, but all indicated that they had been treated well within the prison itself.

IV. SITUATION IN KARACHI

76. The situation in Karachi and other urban centres of Sindh has been particularly alarming. The central figure in the crisis is the Mohajir Qaumi Movement (MQM), a political party that claims to represent Urdu speakers who fled to Pakistan from India after 1947. Its constituency is drawn primarily from the middle classes of the urban centres. Prior to 1992, MQM in fact exercised control over the urban centres in Sindh and was a very influential part of the provincial government of Jam Sadiq. It is alleged that during this period extremists within MQM exercised a reign of terror on its opponents and dissidents within its ranks. It is widely reported that the extremists operated their own detention centres and torture cells during this period.

77. On 19 June 1992, the army launched Operation Clean-up with the promise of restoring law and order in the city. Since that time thousands have died in the violent conflict between the Government and MQM. The conflict has been exacerbated by fighting between the MQM (Altaf) faction led by Altaf Hussain and the MQM (Haqiqi) faction led by Afaq Ahmed. Sectarian groups such as the Sipah-e-Sahaba Pakistan (SSP), a militant Sunni organization, and the Tehrik-e-Jafria Pakistan (TJP) have also been responsible for acts of violence in Karachi.

78. The year 1995 was particularly violent. The rate of politically motivated murders in Karachi reached an average of 10 per day in July; by the end of the year over 1,800 people had been killed. Many of these killings allegedly occurred in police custody or in staged encounters in which the police or Rangers, the paramilitary force that has replaced the army after

it withdrew in 1995, shoot and kill suspects. According to the authorities, most post-arrest encounters in which an individual is killed occur after a detainee attempts to escape or when the police party escorting a detainee to a recovery site is said to come under attack from his associates or enemies and the detainee gets killed. Although there is no doubt that police are targeted in Karachi, the alleged encounters are highly suspect given the fact that all the detainees are invariably killed by multiple gunshot wounds and the police suffer no casualties. By way of example, MQM (Altaf) activist Farooq Dada, who faced numerous and credible charges of murder and extortion, was killed along with three companions in an alleged encounter near the Karachi airport on 2 August 1995. None of the police escorting Farooq Dada were injured in the attack. The Human Rights Commission of Pakistan also documented 200 deaths in Karachi alone during 1995 as a result of torture in custody.

79. On 9 December 1995, the torture-marked bodies of Nasir and Arif Hussain, relatives of the MQM (Altaf) leader Altaf Hussain, were found in a Karachi suburb. MQM (Altaf) alleges that the two had been taken into custody by the police two days earlier. Many independent observers believe the Government to have been responsible for the murders in retaliation for the murder of the brother of the Sindh Chief Minister.

80. The Government has used mass arrests to quell the civil unrest in Karachi. MQM (Altaf) claims that the police and Rangers have arrested 7,000 Mohajirs in numerous police sweeps. Many of those arrested were not suspected of committing a specific crime and were allegedly held until family members paid police officers a ransom for their release. These claims are supported by the Lawyers Committee for Human Rights in Pakistan, which reported that the Government had made over 12,000 arrests on suspicion of terrorist activities countrywide, 9,200 of them in Karachi. The NGO claimed that 830 MQM (Altaf) activists and 189 activists of other parties remained in custody in Sindh.

81. As noted above, both MQM factions have resorted to extrajudicial killings and torture of their opponents and have targeted police and security officials. MQM (Altaf) has consistently claimed in public that its activists are innocent, unarmed victims of ethnic violence. In private they concede that individual activists may be responsible for some of the attacks on police and security officials. However, they emphasize that these are understandable revenge killings and that they are not authorized by the leadership of the movement. The Special Rapporteur believes that the public denials are often implausible and amount to condonation of the attacks.

82. During the Special Rapporteur's visit to Karachi, Senator Haider organized a public meeting at which alleged victims, including many policemen and some Pakistan People's Party (PPP) workers, and family members of victims of alleged MQM atrocities provided testimony. Most told similar stories of sons, husbands or fathers having been killed or tortured by MQM activists. The Special Rapporteur found most of the testimony plausible and accepts that MQM activists are responsible for some of the violence in Karachi. However, he wishes to emphasize that this does not justify the use of illegal means to combat MQM, nor does it exonerate the police and Rangers for the acts of torture and extrajudicial killings that it has committed.

83. The law and order situation appears to have shown some improvement during the first few months of 1996. Statistics provided by the Government show that only 32 persons were killed in law and order incidents during the month of February, in contrast to 163 deaths during the same month in 1995. From the highest level of 276 deaths in June 1995, the number of deaths has decreased each month. That the city of Karachi was able to host the World Cup cricket matches without major incident during the Special Rapporteur's visit is a reflection of the fact that some semblance of law and public order has returned to the city of Karachi. However, the Special Rapporteur must reiterate that he continues to receive credible reports of torture and extrajudicial killings perpetrated by the police and Rangers.

V. QUESTION OF IMPUNITY

84. Although the Government of Pakistan has taken some positive steps to improve the situation of human rights within the country, such as the creation of the Ministry for Human Rights, the ratification of the Convention for the Elimination of All Forms of Discrimination against Women and the partial abolition of flogging, there appears to be a lack of real political will to address the issue of impunity. The Special Rapporteur has received no information to demonstrate any serious effort on the part of the Government to reform the police or judicial systems or to prosecute those responsible for abuse.

85. Provincial powers of appointment, promotion and deployment of police and prison personnel are not subject to institutional systems designed to promote competence, integrity, efficiency and adherence to the rule of law. It is generally understood that corruption is rife. Many of the notoriously underpaid and ill-trained personnel are generally thought to make ends meet by extorting money from those over whom they have power. It is commonly asserted that the jobs of such personnel, ranging from police recruits to station house officers, from prison guards to jail superintendents, can be bought, with the return on investment coming from the opportunities provided by unlawful enrichment.

86. In Karachi, the Deputy Inspector-General of Police provided the Special Rapporteur with statistics on internal disciplinary action taken against police from January 1995 to 1 March 1996. During that period a total of 179 cases were registered against the police. In 51 cases the policemen were dismissed from the police force, 50 received "major punishments" and 40 received "minor" punishments. However, none were prosecuted for their violations. This is consistent with information the Special Rapporteur received from other sources. There appears to be a conviction on the part of police and government officials that administrative disciplinary measures such as dismissal, demotion and transfer are sufficient punishment for police and security officials who have abused their authority. Although the Government has stated its commitment to prosecute any officer found responsible for crimes such as torture, to the Special Rapporteur's knowledge none have been convicted.

87. The Special Rapporteur was informed that judicial magistrates are supposed to make regular visits to places of detention to ensure humane conditions and treatment of detainees. However, during his visit to Lahore

Central Jail, the registry indicated that the last visit by a judicial magistrate to the prison had been in May 1995. More disturbing is the fact that in the few cases where judicial magistrates or High Court judges take action to improve the treatment of prisoners, their orders are routinely ignored by the authorities. For example, the superintendent of Hyderabad Central Jail was served with contempt of court notices on three occasions by the presiding officer of the Special Court for Suppression of Terrorist Activities No. 1 for not complying with his orders.

VI. CONCLUSIONS AND RECOMMENDATIONS

88. For much of its 49 years of independence, Pakistan has had a tormented existence. For most of that period the country was ruled by a series of more or less brutal military regimes. In 1971, its eastern territory was lost when that territory became Bangladesh, a trauma that seems to have been impressively absorbed. The country is racked by intercommunal and intersect strife. The language and style of competitive politics goes beyond adversarial debate in a framework of respect, taking the form of hostile, confrontational and self-interested manoeuvring. There is a very small, very rich class (frequently described as feudal) from which most of the political elite come, and a large majority of very poor people, with a relatively small middle class in between. Law enforcement agencies have traditionally been used more to serve the narrow interests of those in office than to defend the rule of law.

89. Under these circumstances, any government would have a difficult task in installing in the official apparatus a culture of respect for the rule of law, human dignity and human rights. This cannot be done by a stroke of the pen and requires the application of sustained and vigorous political will. The Special Rapporteur was privileged to meet members and officials of the present Government, some of them former political prisoners, some even former torture victims, who appeared to him to be genuinely committed to achieving these goals. Others he met were not so convincing, despite a generalized rhetoric in favour of the same goals. Nor is he convinced of the commitment of government officials with whom he did not meet.

90. Yet the rhetoric itself is important and the Special Rapporteur left the country wanting to believe that within the Government, as a whole, there was a preference for respect for human dignity. What he could not conclude was that this preference was given the political priority necessary for its realization. In this connection, it is also to be noted that the full weight of responsibility for the shortfall in political will should not be borne by the present PPP administration alone, especially in view of its lack of an absolute majority in both houses of the legislature; opposition political parties also have their role to play, as does the manifestly free press. Governmental officials, in general, also acknowledged the important role being played by non-governmental human rights organizations.

91. It is in this context that these conclusions should be understood. Indeed, the recommendations below should be read as being addressed not only to the executive authorities, but also to the legislature as a whole, regardless of party, and to other institutions of Pakistani society.

92. The Special Rapporteur appreciated the great efforts deployed by the Government of Pakistan, especially its Ministry for Human Rights, to permit him to have most of the meetings he sought, and to visit places of detention and to have unmonitored conversations with persons deprived of liberty in those places. Nevertheless, he must draw attention to the refusal to permit him to enter an unrecognized place of detention on the outskirts of Islamabad, run by the Federal Intelligence Agency.

93. The transformation of the Human Rights Cell responsible to the Prime Minister into the Ministry for Human Rights was controversial in Pakistan, but can be seen as a potentially positive development. However, its lack of powers to require the provision of legal redress to victims of human rights violations and its apparent lack of authority as compared with other ministries and provincial governments responsible for law enforcement agencies and the administration of justice, mean that judgement has to be suspended on its long-term effectiveness.

94. The Abolition of the Punishment of Whipping Act, 1996, is a landmark development for which the Government of Pakistan should be congratulated. It not only promises to put an end to most, if not all, judicial sentences of corporal punishment, it has also squarely described corporal punishment as "violative of human dignity". This description is also applicable to the remaining lawful corporal punishment, namely, as a judicial punishment for hadd and as a prison disciplinary sanction.

95. As the fiftieth anniversary of independence approaches (1997), the use of fetters in jails, other than for the purposes contemplated by the Standard Minimum Rules for the Treatment of Prisoners, is long overdue for abolition. The Special Rapporteur believes that the clumsy attempts to conceal their use in the jails he visited can be interpreted as indirect evidence that the Government no longer finds the practice defensible. Abolition would also deprive the institutional personnel of an important means of arbitrariness, repression and corruption.

96. Torture, including rape, and similar cruel, inhuman or degrading treatment are rife in Pakistan, although those with important family, political or international connections are somewhat less at risk of the most extreme forms of torture. The 1994 amendment to the Criminal Procedure Code, a positive initiative in itself, does not appear to have guaranteed that women held by the police will not be raped. Torture is most frequently used to secure confessions or information relating to suspected crimes. It can also be used, like arrest and detention themselves, as a means of extorting bribes.

97. The use of torture, especially in respect of persons held in connection with the investigation of serious crimes, notably of a political nature, is facilitated by the existence of numerous national and provincial law enforcement bodies which cooperate in holding and questioning the detained persons who can be transferred from agency to agency and place to place. Some of the places of detention are not officially recognized. By these means, strict, well-conceived guarantees against abuse are circumvented. When death follows the torture, or is otherwise inflicted on detained persons,

responsibility is avoided by denial of detention, or by recourse to explanations such as that the deaths occurred in encounters or were committed by others.

98. This state of affairs is perpetuated by the virtual impunity from criminal sanction of the perpetrators of these grave crimes. Disciplinary punishments are not of themselves a sufficient or appropriate response.

99. It is the case that in Karachi some of the victims, notably some MQM activists, are themselves reliably suspected of being involved in atrocities, including torture and murder. But, as many of the Special Rapporteur's official interlocutors were quick to accept, official crime is not justified by common or politically motivated crime. Indeed, nothing can be more corrosive of respect for the rule of law and legal institutions than for those charged with upholding them to resort to serious violations of the criminal law.

100. The jails visited by the Special Rapporteur were overcrowded and had inadequate medical facilities. Other jails are reliably said to be similar. More disturbingly, the prison regimes appear to be arbitrary, brutal and oppressive, a situation facilitated by the failure of the judiciary to discharge its obligation to monitor them regularly. Prisoners with access to financial resources are more likely to be able to secure decent treatment. As far as could be seen, women prisoners seemed to enjoy considerably better conditions of detention than men.

101. A renewed commitment by all involved in organized society, political parties, religious groups, communal groups, law enforcement agencies, to eschew resort to criminal violence in pursuit of their objectives needs to be declared and implemented. This should include the abandonment of violent political rhetoric.

102. Pakistan should become a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights and its Optional Protocols.

103. Legislation should be adopted to abolish the remaining use of corporal punishment, namely, that provided for hadd and as punishment for prison disciplinary offences. Pending abolition, medical personnel should comply with medical ethics by refraining from cooperating in the execution of such punishment.

104. The use of bar fetters and similar instruments of restraint should be terminated. Other instruments of restraint should be resorted to only within the limits laid down by the Standard Minimum Rules for the Treatment of Prisoners.

105. To the extent that further legislation is needed, the law should recognize as a criminal offence the unlawful detention of any person and the detention of any person in a place of detention not officially designated as such. Such legislation should be vigorously enforced.

106. It should not be possible for persons to be handed over from one police or security agency to another police or security agency without a judicial order. Where this happens, the officials responsible for the transfers should be held accountable under the criminal law. No judicial orders concerning detention should be issued by administrative magistrates.

107. Police service should be removed from the ambit of political patronage and manipulation and, subject to the need for democratic accountability, be guaranteed sufficient autonomy to ensure that the police fulfil their vocation to uphold the rule of law. Mechanisms should be established to ensure that the recruitment, promotion and deployment of officers are based on professional merit. Police remuneration and training require substantial improvement.

108. Independent complaints bodies and bodies with authority to inspect any place of detention, whose members would include persons acceptable to the local community, should be established on a nationwide basis as a matter of priority. The best practices that have been established by the Pakistan authorities should be followed generally: for example, the "duty officer" system introduced in Karachi could be emulated, though it is clear that such officers would need to have such rank and status as would ensure their immunity from the authority of the station house officer.

109. Similarly, in order to protect women from custodial rape, the system introduced in Karachi of special police stations for female suspects should be expanded, so that all female suspects in Pakistan could be held in police custody only at such special stations.

110. It is essential that the judiciary exercise its responsibility for monitoring prison conditions with something like the zeal with which it is prepared to send people to overcrowded jails. In addition, the establishment of some other form of ensuring independent monitoring of prisons, with a non-governmental component, would seem to be a matter of priority. The recommendations concerning improvement of the recruitment, remuneration, training and management of members of the police service apply equally to personnel of the prison service.

Notes

1/ Decision of Sindh High Court dated 30 December 1993 concerning Cr. Misc. No. 245 of 1989 and C.P. No. D-901 of 1989, p. 3.

2/ Ibid., pp. 16-17.

3/ Ibid., p. 19.

4/ As cited in Amnesty International, Pakistan, "Keep your fetters bright and polished, The continued use of bar fetters and cross fetters", p. 3 (AI Index: ASA 33/12/95, May 1995).

5/ Amnesty International, Pakistan, "Appeal to ban public flogging (AI Index: ASA 33/25/95, November 1995).